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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 George P. Umberger, II, et al.,

12 Plaintiffs,

13 v.

14 County of Folsom, et al.,

15 Defendants.
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No. 2:24-cv-01169-KJM-JDP

ORDER

17 Plaintiffs filed their original complaint in this action in 2024. ECF No. 1. They were not
18 represented by counsel at the time, *see id.*, so the matter was referred to the assigned Magistrate
19 Judge under the Local Rules of this District, *see* E.D. Cal. L.R. 302(c)(21). In August of this
20 year, defendants filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). ECF
21 No. 14. Counsel appeared on behalf of all plaintiffs after the motion was filed, ECF No. 15, so
22 the Magistrate Judge referred the case back to the undersigned as provided by the Local Rules,
23 ECF No. 18.

24 This court set defendants' motion for a hearing on November 6, 2025. ECF No. 21. On
25 September 18, 2025, the parties filed a stipulation and proposed order to set a briefing schedule
26 on the pending motion. ECF No. 23. The court adopted their stipulation and gave plaintiffs until
27 October 10, 2025 to serve and file a response. ECF No. 24. On that deadline, rather than filing
28 an opposition, plaintiffs filed a First Amended Complaint. ECF No. 25.

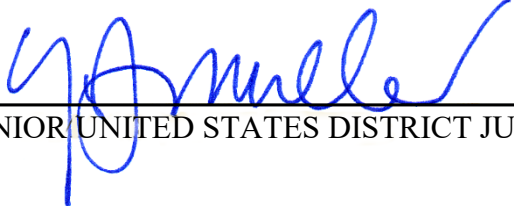
Under Federal Rule of Civil Procedure 15, a plaintiff may amend the complaint “once as a matter of course no later than: (A) 21 days after serving it, or (B) . . . 21 days after receiving service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1). The complaint in this case was served before defendants moved to dismiss. *See* ECF Nos. 7–8, 10 (granting application to proceed in forma pauperis, ordering service of complaint by U.S. Marshal, issuing summons and confirming submission of service documents to U.S. Marshal). Defendants’ filed their motion to dismiss and served it on plaintiffs no later than August 25, 2025. *See* Stip., ECF No. 16. As a result, under Rule 15, the last day on which plaintiffs could amend their complaint as a matter of course was no later than September 15, 2025, several weeks before they filed their amended complaint.

If a plaintiff may not amend the complaint as a matter of course, then it must either obtain “the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). Plaintiffs have not demonstrated they obtained defendants’ written consent, and they did not obtain the court’s leave. The court therefore **strikes** their amended complaint. The case will continue to proceed on the original complaint, filed at ECF No. 1.

Because plaintiffs have not filed a timely opposition to the pending motion to dismiss, the Local Rules provide they may not be heard at oral argument in response to that motion. *See* E.D. Cal. L.R. 230(c). The court therefore **vacates the hearing previously set for November 6, 2025** and will take the pending motion under submission without a hearing. *See* E.D. Cal. L.R. 230(g). In the interests of justice, however, the court will construe the stricken first amended complaint as a request for leave to amend and a proposed amendment. Defendants’ reply in further support of their pending motion, if any, remains due on **October 17, 2025**, as previously ordered.

IT IS SO ORDERED.

DATED: October 15, 2025.



SENIOR UNITED STATES DISTRICT JUDGE